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E.O. 12958: N/A

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SUBJECT: EMBASSY ANALYSIS OF SUBCONTRACTING DECREE

REF: QUITO 2690

1. Summary: President Gutierrez signed Executive Decree 2166 regulating subcontracting (Reftel) on October 5, which will be published in the Official Register on October 12. While several articles in the decree differ from the version Minister of Labor Raul Izurieta originally gave us, we believe the agricultural workers exemption in contracting does not represent a loophole exempting subcontractors from protections in the decree. Congressional Deputy Andres Paez plans to submit draft legislation on subcontracting to Congress with similar content to the decree during the week of October 11. End Summary.

Changes to Decree May Provide Less Protection

2. Several articles in the latest version of the decree differ from the last version the MOL had provided to LabOff. For example, Article 2 of the decree states that "all third-party services should be provided by societies that have the exclusive purpose of providing these services. Excepted are third-party services that are provided in the rural agricultural sector which can be provided by natural persons." LabOff is attempting to confirm with Izurieta that this does not exclude agricultural workers from other provisions in the decree.

3. In addition, the previous draft version of the decree provided by the MOL on September 14, Art. 3 stated that if the decree were violated, subcontracted workers would be considered direct employees of the main company, since the date they were hired. This article was deleted from the signed version. However, Art. 21 of the signed decree states if the decree is violated, the main company will take over the contracting of the workers indefinitely, with all the legal labor obligations and social security benefits.

4. Art. 11 now states that subcontracted workers cannot receive less pay than what is stated as the minimum wage for each sector. In the case that there is no specified minimum wage for a sector, workers must receive the national minimum wage. In the previous version, the decree said subcontracted workers had the right to equal pay, benefits and conditions of work as the main companies' direct-hire employees.

5. The decree states that companies may contract subcontractors to hire workers to perform the companies' primary activities indefinitely. Art. 9 of the decree was not changed and limits the number of subcontracted work force to 75%. This is significantly higher than the percentage requested by union leaders (15%), and was added after a Presidential meeting with union leaders.

Subcontracting Law Project in Congress

6. Andres Paez, President of the Congressional Labor Committee, told LabOff on October 7 that there are currently four draft bills on subcontracting. He is working on harmonizing them and said he plans to present a report to Congress the week of October 11. The majority of points in the law project will be the same as those in the executive decree, he said, including guarantees of indemnization and benefits. He hopes to have a first debate on the topic later this month and a second debate in November. Paez said he is optimistic about prospects for Congressional approval.

Comment

7. The decree is not law until it is published in the Register, currently planned for October 12. While the news of its signing is now public, the text is not yet available to the public or press. We believe the agricultural workers exemption on contracting does not represent a loophole exempting subcontractors from the rest of the protections in the decree, and are attempting to confirm this. Unfortunately MOL Izurieta has been unavailable due to his efforts to resolve health workers strike.
CHACON